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 13 OBESITY RESEARCH INSTITUTE, LLC

14 UNITED STATES DISTRICT COURT  
 15 SOUTHERN DISTRICT OF CALIFORNIA

16 OBESITY RESEARCH INSTITUTE,  
 17 LLC, a California limited liability  
 18 company,

19 Plaintiff.

20 vs.

21 FIBER RESEARCH INTERNATIONAL,  
 22 LLC, a Nevada limited liability company,  
 23 and DOES 1-10, inclusive,

24 Defendants,

25 FIBER RESEARCH INTERNATIONAL,  
 26 LLC,

27 Counterclaimant,

28 vs.

OBESITY RESEARCH INSTITUTE,  
 LLC,

Counter-defendant.

CASE NO. 3:15-cv-00595-BAS-MDD

**OBESITY RESEARCH  
 INSTITUTE'S NOTICE OF  
 OBJECTION AND OBJECTION  
 TO MAGISTRATE JUDGE'S  
 ORDER ON JOINT MOTION TO  
 DETERMINE DISCOVERY  
 DISPUTE RE: MOTION TO  
 STRIKE SUPPLEMENTAL  
 DISCLOSURES**

*[filed concurrently with Memorandum  
 of Points and Authorities, Declaration  
 of Allison Borts, Declaration of Sean  
 D. Flaherty, , and Index of Exhibits]*

Complaint Filed: March 16, 2015  
 Courtroom: 4B

Judge: Hon. Cynthia Bashant

Hearing Date: August 1, 2016

**NO ORAL ARGUMENT UNLESS  
 REQUESTED BY THE COURT**

Gordon & Rees LLP  
101 W. Broadway Suite 2000  
San Diego, CA 92101

1 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:  
2 PLEASE TAKE NOTICE that on August 1, 2016, in Courtroom 4B of the above-  
3 entitled Court, located at 221 W. Broadway, Suite 4145, San Diego, CA 92101,  
4 Plaintiff Obesity Research Institute, LLC (“ORI”) will and hereby does submit  
5 limited objections to an order entered by Magistrate Judge Mitchell Dembin  
6 substantially denying defendant FRI’s motion to strike witnesses and documents  
7 identified in supplemental disclosures, and subsequent reconsideration of the same  
8 under Rule 60(b). Dkt. 272 (Apr. 8, 2016) and Dkt. 249 (June 7, 2016)  
9 (collectively, “Exclusion Orders”).

10 This Notice of Objection & Objection, together with the associated papers,  
11 was initially timely filed on June 21, 2016 at Docket No. 284. It was subsequently  
12 stricken, however, for including a Proposed Order as an attachment to the filing, in  
13 addition to the Proposed Order having been emailed to Chambers. Dkt. 286. It is  
14 for that reason this Notice of Objection & Objection is being re-filed.

15 Pursuant to the Court’s Civil Chamber Rules, there will be no oral argument  
16 on the assigned hearing date, unless the parties are otherwise notified by or through  
17 the Court.

18 This motion is made following the conference of counsel that took place on  
19 June 14, 2016.

20 ORI specifically objects to the following ruling and order made on the  
21 record in the April 8 Order and refusal to fully reconsider under Rule 60(b) in the  
22 June 7 Order:

23 Ruling 1: Order excluding Brian Salerno, other than as a non-  
24 retained expert witness, Ron Ovadia, Steven Snyder,  
25 Gayle Bensussen, Certain 30(b)(6) Witnesses, Patience  
26 Hannah, Angela Emmerson, Bradley Sutton or Jamie  
27 Stein to supple evidence on a motion, at a hearing, or at a  
28 trial in this case. (ECF No. 205 at 10:6-10.)

ORI's Objection is made on the grounds that the Order's foregoing ruling is contrary to law because ORI timely supplemented, given that 10 of the 11 depositions completed (at that time) were completed in the preceding four weeks prior to ORI's supplemental disclosure, and provided the factual need and context for adding newly obtained evidence to ORI's disclosures. The Order's ruling as to the excluded witnesses is alternatively clearly erroneous because, although ORI's response to the request was literally compliant with the requirements of Federal Rule of Civil Procedure 26, the Order nonetheless found certain witnesses identified by ORI in its supplemental disclosures as untimely and unjustified. (ECF No. 205 at 6:20-24 (Salerno); 7:15-16 (Ovadia); 7:20-21 (Snyder); 8:5-7 (Bensussen); 8:9-14 (Certain 30(b)(6) Witnesses); 8:15-20 (Hannah, Emmerson, Sutton, and 8:22-26 (Stein).)

ORI's Objection is based on this Notice of Objection and Objection, the attached Memorandum of Points and Authorities, the Declarations of Allison Borts, and Sean D. Flaherty and exhibits thereto, all pleadings and other records on file in this action, and such further evidence and arguments as may be presented at any hearing on the motion.

Dated: June 24, 2016

GORDON & REES LLP

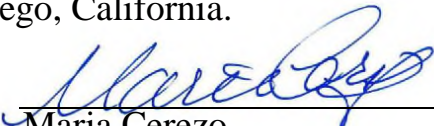
By: /s/ Richard P. Sybert  
 Richard P. Sybert  
 Sean D. Flaherty  
 Patrick J. Mulkern  
 Attorneys for Plaintiff  
 OBESITY RESEARCH  
 INSTITUTE, LLC

**CERTIFICATE OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Gordon & Rees LLP 101 W. Broadway, Suite 2000, San Diego, CA 92101. On June 24, 2016, I served the foregoing document entitled: **OBESITY RESEARCH INSTITUTE'S NOTICE OF OBJECTION AND OBJECTION TO MAGISTRATE JUDGE'S ORDER ON JOINT MOTION TO DETERMINE DISCOVERY DISPUTE RE: MOTION TO STRIKE SUPPLEMENTAL DISCLOSURES** by electronic service through the CM/ECF System which automatically generates of Notice of Electronic Filing ("NEF") and is sent by e-mail to all CM/ECF Users who have appeared in the case in this Court. Service with this NEF will constitute service pursuant to Federal Rules of Civil Procedure.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on June 24, 2016 at San Diego, California.

  
\_\_\_\_\_  
Maria Cerezo

Gordon & Rees LLP  
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